IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1517 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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TRIBHOVANDAS A SINGHVI - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR YS MANKAD for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1,3 - 4.
MR HS MUNSHAW for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 09/02/2007

ORAL JUDGMENT

1. The short facts of the case are that the petitioner, who is holding the agricultural land

bearing Survey No.138 was served with the notice by the DDO dated 14.12.1993, whereby he was called upon to show cause as to why the maximum fine should not be imposed for un-authorised excavation of morum from the agricultural land and thereby consequential breach of the provisions of the Bombay Land Revenue Code (hereinafter referred to as “the Code”). The petitioner submitted reply to the show-cause notice on 4.1.1994 and contended, inter alia, that they are having two quarries for salt in the nearby area and, therefore, for laying down morum on the road for those factory of the salt, the morum was used. It was also stated that the petitioner has also not engaged in any construction activity or construction of dam. If anybody else has excavated morum from the agricultural land they were not aware of that. The District Collector ultimately on 25.5.1994 passed the order, observing that thee is un-authorised excavation and the TDO has recommended imposition of fine of 40 times revenue, therefore, he has imposed the fine of 40 times revenue and for the whole, the total calculation

comes to Rs.1,03,603/-. The petitioner carried the matter in revision before the State Government being No.14/1994 and the State Government as per the order dated 11.1.1996, dismissed the revision. Under these circumstances, the present petition.

2. Heard Mr.Mankad, learned Counsel for the petitioner, Mr.Barot for Mr.Munshaw, learned Counsel for the District Panchayat and Mr.Soni, learned AGP for the respondent State Government.

3. Mr.Mankad, learned Counsel appearing for the petitioner, raised the contention that the mandatory procedure for approving the case permitting cross-examination, etc., was not followed and in support of his submission, he relied upon the decision of this Court in case of **"Patel Devabhai Bhawanbhai v. Harijan Merabhai Savabhai and Ors.", reported in 1983 GLH, UL 86**, which is delivered in view of another decision of this Court in case of **"Jhala Mansangji Kalyansangji and Ors. v. Jhala Mahobatsang Madarsang and Anr.", reported 1982 GLH, 592** and, therefore, he submitted that the order is in breach of the principles of natural justice and

mandatory procedure was not followed and, therefore, the impugned order deserves to be quashed.

4. The perusal of the affidavit-in-reply filed on behalf of the Taluka Development Officer shows that the rojkam was drawn by Talati-cum-Mantri and the report was submitted by Talati to TDO in which it was stated that there is unauthorised excavation of morum from the land admeasuring 4 acres and 0 gunthas and the depth of the field was lower down by 3 mtrs. The learned Counsel for the petitioner, Mr.Mankad did submit that the rojkam and the report, both were submitted behind the back of the petitioner and no copy of the said documents was supplied to the petitioner, nor the petitioner was given opportunity to cross-examine and, therefore, the same may not be considered as an evidence before the TDO. I am afraid such contention can be accepted so as to canvass the order as in breach of the principles of natural justice. In response to the show-cause notice, the petitioner did submit his reply. At no point of time, neither in the reply the petitioner demanded for supply of such

documents, nor was the demand made on behalf of the petitioner to cross-examine any officer. If the demand was not made, then in that case there was no question of supplying such documents, nor was there any question for cross-examination. Therefore, the order cannot be said as in breach of the natural justice or without following the mandatory procedure. It may be recorded that the powers are for holding summary inquiry. It is true that there may not be any straight-jacket formula for the scope and ambit of such summary inquiry and it may vary from facts to facts. Had it been a case where the petitioners had applied for the documents and the same were not supplied by the authority, or a case where the demand was made for cross-examination and such demand was not accepted, it might stand on a different footing, but in the case where reply was submitted and no demand was made for supply of any document or for cross-examination, it can not be said that in spite of the same, it was required for the authority to supply the documents or to arrange for cross-examination of the witnesses by the petitioner. As such, if the

procedure of summary inquiry is stretched to that extent in absence of any demand, the very purpose of holding summary inquiry would be frustrated. Therefore, the said contention raised on behalf of the petitioner cannot be accepted. The reliance placed upon the decision is ill-founded inasmuch as, as such it was a case of following the procedure before the Debt Settlement Officer. Further, the full text of the judgement is not available, but the language reproduced in the portion printed in GLH shows that the Court observed that the parties were not given opportunity of cross-examine each other or their statements were recorded in absence of each other. The said judgement cannot be read as laying down the principles of arranging the cross-examination in spite of no demand, as a mandatory required for holding of the Summary Inquiry. Therefore, the said decision in case of **“Patel Devabhai Bhawanbhai” (supra),** is of no help to the petitioner. In the case of **“Jhala Mansangji Kalyansangji and Ors.“ (supra)**, on the same line the judgement is of no help to the petitioner. The said case was also for the

proceedings before the Debt Settlement Officer under Gujarat Rural Debtors Relief Act, 1976. Further, in the said case this Court recorded, inter alia, at para 11 that no notice was issued by the Debt Settlement Officer to the interested parties i.e. petitioners No.2 and 3 and the same infirmity so far as petitioner No.3 is concerned, in any case, was found as fatal and contrary to the breach of the principles natural justice. The fact situation of the said case cannot be equated with the present case, more particularly because the opportunity was given to the petitioner and not only that but the petitioner did submit reply to the show-cause notice and the peculiar circumstances in the present case is that no demand was made by the petitioner to supply the documents or to permit cross-examination and, therefore, such decision is of no help to the petitioner.

5. The contention raised on behalf of the petitioner that the penalty was imposed to the fullest extent in both ways i.e. on th basis of the area and on the basis of the quantum, deserves consideration. If the contention is bifurcated

into two parts namely; for the fullest area is concerned, it does appear from the record that the alleged area for breach of the condition was even as per the report of Talati, admeasuring 4 acres, whereas the total holding of the petitioner was 5 acres. Therefore, if the breach was qua 4 acres, the penalty could not have been imposed for 5 acres. In the matter of imposition of the penalty, the same is permissible to the extent of the breach committed and the power cannot be extended qua the area in which there is no allegation of breach. The reference may be made to the decision of the Bombay High Court in case of **"Secretary of State for India vs. Abdul Husen Dosaji Godwala", reported in AIR 1927 Bombay, 601**. Therefore, the contention of Mr.Mankad to that extent deserves to be accepted that the imposition of fine qua the area exceeding 4 acres, consequently penalty for 1 acre could not have been imposed and the same can be said as without authority in the eye of law.

6. Concerning to the second part of the contention on the aspects of maximum penalty imposed, if considered, it appears that it is true that in

normal circumstances when the penalty is to be imposed, it must commensurate with the breach as well as the gravity of the breach. The reduction qua the breach on the basis of the area of land is concerned, the discussion is already made herein above, however, qua the gravity of the breach is concerned, if such a breach is not so grave, the authority has to exercise the discretion in proportionate to the gravity of the breach while imposing the fine and rather on the quantum of fine, it has to apply its mind, but if the breach is serious, then under such circumstances, if the discretion is exercised for imposition of maximum fine, it cannot be said that there was no proper exercise of the discretion by the authority or that the imposition of the fine to the fullest extent in such matter is by perverse exercise of discretion.

7. If the facts of the present case are examined, the breach found by both the authorities was pertaining to excavation of morum from the agricultural land. Rule 77 of the Gujarat Land Revenue Rules expressly prohibits the excavation

of morum from the land, unless such an action is for domestic purpose of the agriculturist concerned or for agricultural purpose. Therefore, when the legislature has expressly prohibited such activity on the part of the agriculturist of excavation of morum from the agricultural land and if any agriculturist has indulged in such breach, it can be said that it was a grave breach, which may warrant the maximum permissible fine upon the holder of the land, who has committed breach.

8. Mr.Mankad, learned Counsel appearing for the petitioner attempted to submit that as per the allegations read with the reply, the morum was excavated by the petitioner for laying down over the road of the salt factory of the petitioner and it was not for any sale or for any commercial purpose, nor can it be said as for trade or profit and, therefore, it may be termed as for domestic purpose of the petitioner and, therefore, the gravity of the breach may not be equated for the breach, which are expressly prohibited by Rule 77 in view of the latter portion of the language used in the rule. I am

afraid such contention can be accepted when excavation of morum is for laying down on the road of factory premises of the petitioner. The exemption as contemplated in the words “as a domestic and agricultural purpose”, would mean the use by the agriculturist of such morum or such action of excavation for the purpose other than for trade or for profit or other purposes as provided in the earlier portion of the Rule. If road is laid down reaching the factory and the morum is excavated and is used in the said road, it would certainly not domestic purpose of the agriculturist. Further, all other purposes are included in the breach, except for domestic or agricultural purposes and, therefore, the contention of Mr.Mankad that it was for on domestic purpose cannot be accepted.

9. Under these circumstances, if the breach is such, which is expressly prohibited by the legislature and if found committed, the action on the part of the authority for imposing fine to the fullest extent cannot be said as in perverse exercise of the discretion, nor can it be said that the discretion is not properly exercised on the

ground germane to the exercise of power for the purpose of the Code for maintaining the fertility of the agricultural land by prohibiting the excavation of morum. Further, the excavation as recorded in the rojkam read with the report was by depth of 3 mtrs., and such an excavation cannot be leniently viewed even otherwise by the authority. Therefore, considering the facts and circumstances, the imposition of fine of fullest extent cannot be said as unreasonable or arbitrary.

10. In the result, the impugned order passed by the DDO and its confirmation thereof by the State Government shall stand modified to the extent that the fine of 40 times revenue shall stand restricted to the area of the land admeasuring 4 acres and 0 gunthas only as per the revenue assessment prevailing at the relevant point of time. The DDO shall ensure that the calculation is made accordingly and the intimation shall be given calling upon the petitioner to pay up the fine, within a period of one month from the date of receipt of the order of this Court.

11. The petition is partly allowed to the aforesaid

extent. Rule made absolute accordingly. Considering the facts and circumstances, no order as to costs.

9.2.2007 **(Jayant Patel, J.)**

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